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**FEB 22 2005**

In re Application of  
Cohen  
Application No. 10/697,598  
Filed: October 29, 2003  
Attorney Docket No. P-US083-A-MG  
For: MEDICAL DEVICES AND EFAB  
METHODS AND APPARATUS FOR  
PRODUCING THEM

**OFFICE OF PETITIONS**

**DECISION ON  
PETITION**

This is a decision on the petition, filed November 15, 2004 (certificate of mailing date November 11, 2004), requesting a partial withdrawal of the Notice of Omitted Item(s) in a Nonprovisional Application (Notice), mailed September 14, 2004, insofar as it states that Figure 8 was not filed on October 29, 2003. The petition will be treated under 37 CFR 1.53(e).

The petition under 37 CFR 1.53(e) is **DISMISSED**.

The application was filed on October 29, 2003. On September 14, 2004, the Office of Initial Patent Examination mailed a Notice informing petitioner that Figure 8 appeared to have been omitted. In addition, the Notice required applicant to submit an executed oath/declaration and a surcharge for its late filing.

On November 15, 2004 (certificate of mailing date November 11, 2004), the instant petition was filed.

Petitioner requests an October 29, 2003 filing date for Figure 8 on the basis that the allegedly omitted figure was received in the Patent and Trademark Office (PTO) on October 29, 2003. In support, the petition is accompanied by a copy of applicant's postcard receipt showing an Office of Initial Patent Examination generated barcode showing October 29, 2003 as the date of receipt. The postcard lists:

- 1) Utility Patent Application Transmittal (4 pages)
- 2) Provisional Patent Application & Coversheet (29 pages)
- 3) Certificate of Mailing (1 page)

A properly itemized return postcard constitutes *prima facie* evidence that the items were filed on the date stamped thereon. However, a postcard receipt will not serve as *prima facie* evidence of receipt of any item which is not adequately itemized on the postcard. MPEP 503.

The itemized postcard in this case was not properly itemized. As stated in MPEP 503, "[M]erely listing on the postcard..."patent application" will not serve as a proper receipt for each of the required components of an application. ...Furthermore, merely incorporating by reference in the postcard receipt, the items listed in a transmittal letter will not serve as *prima facie* evidence of receipt of those items."

Since Figure 8 cannot be proved to be one of the papers filed on October 29, 2003, the application cannot be accorded a October 29, 2003 filing date with Figure 8 as a part of the original disclosure of this application. The \$130.00 petition fee will be charged to deposit account no. 50-2123.

Petitioner may still submit Figure 8 and a petition under 37 CFR 1.182 requesting a filing date as of the date Figure 8 was filed.

If petitioner does not select the above option, petitioner must either (1) file an amendment to the specification deleting references to missing Figure 8 prior to the first USPTO action in order to avoid further delays in the examination of the application or (2) in the alternative, submit Figure 8 as an amendment to the drawings. Any such amendment will, of course, be reviewed by the examiner for new matter compared to the original specification filed on October 29, 2003. See MPEP 608.02(a).

The application is being returned to the Office of Initial Patent Examination for further processing with a filing date of October 29, 2003. Figure 8 will **not** be considered part of the original filing.

Any inquiries pertaining to this matter may be directed to the undersigned at (571) 272-3230.



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Office of Petitions